IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5651 of 1995
with
CIVIL APPLICATION No 4206 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V.K.FARMING CO OP KHEDUT SAMUDIAYIK SAHKARI MANDLI LTD
Versus
DIST.REGISTRAR CO OP SOCIETIES

Appearance:
MRS KETTY A MEHTA for Petitioner No. 1
MS MANISHA SHAH A.G. P. for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI
Date of decision: 02/12/2004

ORAL JUDGEMENT

1. The petitioner has by way of this petition challenged the impugned order dated 1st July, 1995 passed by the District Registrar, Cooperative Societies, Surat, at annexure-J to the petition, whereby, the District

Registrar under Sections 107 and 108 of the Gujarat Cooperative Societies Act, had directed to wind up the Society and to appoint the liquidator.

2. The petitioner is a cooperative society registered under the provisions of the Gujarat Cooperative Societies Act, 1961 (the Act for short). The District Registrar, Cooperative Societies, Surat, issued a show cause notice to the petitioner alleging certain irregularities regarding non-agriculturalists being members of the society and not carrying out agricultural operation on the land as shown in the formation of the Society. The said notice was issued for taking action under section 81 of the Act. Thereafter the District Registrar, Cooperative Societies, Surat, by his order dated 17.12.1991 passed an order under section 81 of the Act appointing Administrator of the society and removing the Executive Committee of the Society. Against the said order the petitioner preferred Appeal No.98/91 before the Additional Registrar (Appeals), Cooperative Societies, Gujarat State, who by his order dated 29.1.1992 dismissed the appeal. The petitioner, therefore, preferred Revision Application before the State Government under section 155 of the said Act.

3. The Revisional Authority, by order dated 23.3.1992, allowed the Revision Application and held that the findings arrived at by the District Registrar were contrary to law and evidence on record of the case and that the District Registrar erred in passing the order under section 81 of the said Act. Thus, the order of the District Registrar and Additional Registrar (Appeals) were quashed and set aside.

4. In the meanwhile the Mamlatdar, Choryasi Prant held an inquiry under section 84(C) of the Bombay Tenancy and Agricultural Lands Act and in appeal it was held that there was no cause for taking action under section 84(c) of the said Act regarding the sale of lands in question to the petitioner Cooperative Society.

5. Though the proceedings under section 84(c) of the Bombay Tenancy and Agricultural Lands Act were concluded, the Deputy Collector, Choryasi Prant, issued a show cause notice dated 3.8.1991 for the alleged breach of section 63 of the Bombay Tenancy and Agricultural Lands Act and for resumption of land to the Government. The petitioner submitted reply dated 7.4.1993. The Deputy Collector, Choryasi Prant passed an order dated 16.5.1995 and held that the petitioner had committed breach of section 63 and the land should be resumed by the Government and

shown in the village Registers as Government land. Against the said order the petitioner preferred Revision Application before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal by order dated 30.6.1995 passed an order directing the parties to maintain status quo.

6. Thereafter, the District Registrar, Cooperative Societies, Surat, passed order dated 1.7.1995 under sections 107 and 108 of the Gujarat Cooperative Societies Act which is under challenge in the present petition.

7. Heard the learned counsel for the respective parties. Learned counsel for the petitioner submitted that the impugned order has been passed without giving any notice to the petitioner and without looking into the earlier proceedings which were concluded by the order of the State Government, passed under section 155 of the said Act.

8. From the record it is clear that the Mamlatdar, Choryasi Prant held an inquiry under section 84(c) of the Bombay Tenancy and Agricultural Lands Act and in appeal it was held that there was no cause for taking action under section 84(c) of the said Act regarding the sale of the lands in question. It is stated that the Tribunal has quashed and set aside the order of the Deputy Collector by judgement and order dated 3rd November 1995. Admittedly the proceedings were initiated pursuant to the order of the Deputy Collector which is now set set aside. Therefore the premises on which the proceedings were initiated did not survive. Apart from that the District Registrar had relied upon the findings arrived at by the Deputy Collector, Choryasi Prant, which are not relevant for the purpose of relevant consideration under sections 107 and 108 of the Gujarat Cooperative Societies Act as the order of Deputy Collector was passed under the provisions of the Bombay Tenancy and Agricultural Lands Act.

9. In view of the above, the order dated 1st July 1995 passed by the Joint Registrar, Cooperative Societies, at Annexure-J to the petition is quashed and set aside. The District Registrar or Competent Authority shall examine whether the Society is required to be taken into liquidation or not. In case the Competent Officer is still of the view he should proceed with the matter, he may issue notice stating cogent reasons for the same and after giving reasonable opportunity to the petitioner and also keeping in mind the decision of this Court rendered in the case of Apexa Co-op. Bank Ltd. v. District Registrar & Anr., reported in 1993 (2) G.L.H.

p.86, he shall pass a reasoned order. Rule is made absolute to the aforesaid extent with no order as to costs.

10. In view of the order passed in the main matter, no orders in Civil Application No.4206/98. Civil Application stands disposed of accordingly.

[K.S. JHAVERI, J.]

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